IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No. 840 of 1998

For Approval and Signature:

HONOURABLE MR.JUSTICE R.S.GARG

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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KHIMABHAI KANABHAI LEGAL HEIRSOF SANTOKBEN KANABHAI - Petitioner(s)

Versus

TATA CHEMICALS LTD. & 1 - Respondent(s)

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Appearance :
MR KD PANDYA for Petitioner,
MR AMIT PANCHAL for Respondent No.1,
MS MANISHA LAVKUMAR for Respondent No.2,

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CORAM : HONOURABLE MR.JUSTICE R.S.GARG

Date : 27/06/2007

ORAL JUDGMENT

1. Mr.K.D. Pandya, learned counsel for the petitioner, Mr.Amit Panchal, learned counsel for the respondent No.1 and Ms.Manisha Lavkumar, learned Assistant Government

Pleader for the respondent No.2.

2. The petitioner, who made a submission before the Controlling Authority under the Gratuity Act, 1972, being aggrieved by the orders passed by the Controlling Authority and the Appellate Authority rejecting his claim, is before this Court with a submission that the petitioner's appeal could not be dismissed less appreciating that the petitioner could obtain a succession certificate from the concerned Judge. He submits that the Appellate Authority, under the Payment of Gratuity Act, should have remanded the matter back to the Controlling Authority with a direction to decide the matter afresh, after taking into consideration the effect of the succession certificate.

3. Mr.Amit Panchal, learned counsel for the respondent No.1 – authority could not oppose this contention, but, however, submitted that the Appellate Authority was justified in not relying upon the certificate which was filed for the first time before the Appellate Court.

4. In the opinion of this Court, the Appellate Court itself could have taken into consideration the effect of the

certificate, because, effect of each and every subsequent event is to be taken into consideration by the appellate forum. Assuming for a minute that such process or procedure could not be followed, then, the appellate court was obliged and duty bound to remand the matter along with the documents to the learned Controlling Authority for deciding the matter afresh, after taking into consideration the effect of the succession certification.

5. For the reasons stated above, the impugned orders passed by the Controlling Authority and the Appellate Authority are hereby quashed. The Controlling Authority shall restore the matter on its Board, shall allow the present petitioner to file a copy of the succession certificate and after providing an opportunity of hearing to both the parties, shall decide the matter afresh in accordance with law and the observations made aforesaid.

6. The parties present before this Court shall appear before the Controlling Authority on 31/7/2007. It shall be the duty of the petitioner to file a certified copy of this judgement enabling the authority to know that what it is

required to do.

7. The petition is accordingly allowed. Rule is made absolute to the aforesaid extent. There shall be no order as to costs.

(R.S. GARG, J.)

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